

DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations

Section 3591.2, Subsection (a)

Oriental Fruit Fly Eradication Area

INITIAL STATEMENT OF REASONS/

POLICY STATEMENT OVERVIEW

Description of Public Problem, Administration Requirement, or Other Condition or Circumstance
the Regulation is Intended to Address

This regulation is intended to address the obligation of the Department of Food and Agriculture to protect the agricultural industry from the movement and spread of injurious plant pests within California.

Specific Purpose and Factual Basis

The specific purpose of Section 3591.2 is to provide authority to the State to eradicate infestations of *Bactrocera dorsalis*, Oriental fruit fly, from within the declared eradication area by the established means and methods.

The factual basis for the determination by the Department that the amendment of this regulation is necessary is as follows:

Oriental fruit fly is a destructive insect pest of innumerable commercial agricultural crops. Fruits (including nuts, dates, and berries), many kinds of vegetables, and the fruiting bodies of many wild and ornamental plants are known to be hosts or possible hosts of the Oriental fruit fly. Larval feeding reduces the interior of fruit to a rotten mass. Egg punctures admit decay organisms which cause tissue breakdown. Damaged fruit is generally unfit for human consumption. The fly can be artificially spread by movement of hosts which are infested with the fly.

An adult Oriental fruit fly has recently been trapped in the County of San Mateo. On June 27, 2007, a mature male Oriental fruit fly was taken from a trap in the San Carlos area of San Mateo County. The detection of an adult Oriental fruit fly meet the State's and national and

international standards that mandate intensive delimitation efforts to determine if an incipient infestation of the fly exists in the San Carlos area of San Mateo County.

The Oriental fruit fly is a methyl eugenol attracted fruit fly. This amendment will provide authority for the State to perform specific detection, control and eradication activities against the Oriental fruit fly in San Mateo County. This authority includes, "The searching for all stages of the fly by visual inspection, the use of traps, or any other means." It is immediately necessary to perform these activities within the San Carlos area of San Mateo County. To prevent spread of the fly to noninfested areas to protect California's agricultural industry and urban environment, if necessary, treatment activities against the fly would have to begin upon the detection of a second life stage of the fly within three miles and within one life cycle. The United States Department of Agriculture's Animal and Plant Health Inspection Service also accepts this standard as the trigger for an eradication response. The Food and Agriculture Organization of the United Nations has a similar international standard established. After the eradication trigger is met, treatments are to begin within 24-72 hours. However, "The searching for all stages of the fly by visual inspection, the use of traps, or any other means" must begin immediately to determine if there is an incipient infestation in San Mateo County. Therefore, it is necessary to amend Section 3591.12(a) on an emergency basis.

If the fly were allowed to spread and become established in host fruit production areas, California's agricultural industry would suffer losses due to decreased production of marketable fruit, increased pesticide use, and loss of markets if other states or countries enacted quarantines against California products.

Additionally, the immediate implementation of this proposed regulatory action is necessary to prevent the USDA, APHIS from considering the entire state as infested with Oriental fruit fly, rather than just the current area of San Mateo County. If this were to occur, there would likely be additional detrimental quarantine requirements directed against California host commodities by the USDA, APHIS and our international trade partners.

The Oriental fruit fly has the capability of causing significant irreparable harm to California's agricultural industry and some possible adverse environmental impacts. While the Department's compliance with the California Administrative Procedure Act and the California

Environmental Quality Act (CEQA) are separate actions, they can be interrelated. Although adoption of specific regulatory authority can be the beginning of a project and therefore covered by CEQA, this regulation, for the reasons already set forth, constitutes a specific act necessary to prevent or mitigate an emergency as authorized by Public Resources Code section 21080, subdivision (b) (4) and Title 14, California Code of Regulations Section 15269, subdivision (c). The regulation is also an action required for the preservation of the environment and natural resources as authorized by Title 14, California Code of Regulations, Sections 15307 and 15308.

The proposed amendment of this eradication regulation established San Mateo County as an eradication area. The entire county of San Mateo was proposed as an eradication area because it is the political division which provides the most workable eradication area boundary for exterminating an established Oriental fruit fly infestation. Fruit which may have already been moved from the infested area to another portion of the county and flies which may have already spread naturally from the infested area may have already resulted in small infestations outside the known infested area. To enable rapid treatment of these small infestations without frequent amendment of the regulation, the entire county was established as an eradication area.

Additionally, there was an unknown pest introduction pathway into San Mateo County and the Department has no assurances that this pathway has been closed. Therefore, the Department will need to maintain the authority for, "The searching for all stages of the fly by visual inspection, the use of traps, or any other means" in San Mateo County until such time the Oriental fruit fly becomes generally established in California. It is the program's intent to maintain specific Oriental fruit fly detection trap densities in San Mateo County to verify the introduction pathway is closed.

This regulation provides authority for the State to perform control and eradication activities against Oriental fruit fly in San Mateo County. To prevent spread of the fly to noninfested areas to protect California's agricultural industry, it was necessary to immediately begin trapping/treatment activities against the Oriental fruit fly. Therefore, it was necessary to amend this regulation as an emergency action.

Estimated Cost of Savings to Public Agencies or Affected Private Individuals or Entities

The Department of Food and Agriculture has determined that Section 3591.2(a) does not impose a mandate on local agencies or school districts and no reimbursement is required under Section 17561 of the Government Code.

The Department also has determined that no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the amendment of 3591.2(a).

The cost impact of the changes in the regulations on private persons and businesses are expected to be insignificant.

The Department has determined that the proposed actions will not have a significant adverse economic impact on housing costs or California business, including the ability of California businesses to compete with businesses in other states. The Department's determination that the action will not have a significant statewide adverse economic impact on business was based on the following:

The emergency amendment of Section 3591.2(a) provides authority for the Department to conduct eradication activities against Oriental fruit fly within San Mateo County and there are no known private sector cost impacts.

Assessment

The Department has made an assessment that the repeal of the regulation would not 1) create or eliminate jobs within California; 2) create new business or eliminate existing businesses with California; or 3) affect the expansion of businesses currently doing business with California.

Alternatives Considered

The Department of Food and Agriculture must determine that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

Information Relied Upon

The Department relied upon the following studies, reports, and documents in the proposed adoption and subsequent amendment of Section 3591.2:

“Pest and Damage Record #P087783,” dated June 27, 2007, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Action Plan for Methyl Eugenol Attracted Fruit flies, including the Oriental Fruit Fly, *Bactrocera dorsalis* (Hendel),” April 2000, California Department of Food and Agriculture, Plant Health and Pest Prevention Services (11 pages).